United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: June 26, 1998

TO : Richard L. Ahearn, Regional Director
Region 9

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Sheet Metal Local No. 24
(McGill Airflow Corp.)
Case 9-CC-1607

This 8(b)(4)(ii)(B) case is being submitted for advice as to whether statements made by agents of Local 24 were sufficient to constitute restraint and coercion within the meaning of the Act.

McGill Airflow (the Employer) and the Sheet Metal Workers International Union, along with the respective local unions, have been involved in a protracted contractual dispute for well over a year. As a consequence of this dispute, the Employer has implemented its final offers in at least two locations, one in California and one in Columbus, Ohio. The Employer asserts that when it failed to agree to prevailing wage for spiral duct (noting that they already had contracts in place) the International pulled the union label from McGill products on May 23, 1997. The Unions contend the Employer is involved in a campaign to cut wages and benefits dramatically and/or failing that to go nonunion.

After the union labels were pulled, the International sent letters to its locals and members advising them, in essence, that it was their personal choice with respect to whether they wanted to install product without a union label.[1]

Peck Hanniford & Briggs is a mechanical contractor primarily involved in the installation of HVAC. On February 20, 1998, PHB placed an order with McGill Airflow

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[1] There is no evidence that Local 24, the Charged Party in the instant case, sent letters to or otherwise induced or encouraged any employees to refrain from handling product without the union label.

for $592,425. Within a day or so, James Briggs, PHB president, received a call from Tom Murray, a business agent of Sheet Metal Workers Local 24. Sheet Metal Workers Local 24 has represented PHB's employees for many years. Murray asked Briggs if he had placed an order with McGill. When Briggs confirmed he had, Murray said he wished he had not done so and said something like he did not know if the men would install it or that the men might not install it. Briggs could not recall the exact words. Briggs told him he would place the order and had to consider the consequences of canceling. Briggs asked if McGill had a union label. (Briggs says there is nothing in the contract concerning the label but says it is understood the material PHB installs has to have the label.) Murray told him the label had been pulled. Briggs asked for a letter from the Union saying they could not install the McGill product. Murray said he could not do that.

After obtaining information from McGill, Briggs spoke again to Murray. Briggs also spoke with Charlie Frazier, Local 24 business manager. Briggs again pushed for letters saying that the Union could not install product without the union label but the union representatives declined. Briggs states that Frazier, like Murray, told him during the conversation that he did not know if the men would install the product or was not sure if the men would install the product. Again, Briggs does not remember the exact words used. He also does not recall who brought up the subject of whether the men would or would not install the product but says it was raised several times during the conversation. Briggs does say there was no specific statement that the men, in fact, would not install the product. (Briggs said neither Murray nor Frazier made such explicit or definitive statements. They were all couched in that the men "might" not ....) Briggs asked why the union label had been pulled and Frazier told him that McGill and the International had a dispute over wages on a national basis. He said McGill did not have a signed contract with Local 24 in Columbus, Ohio and had implemented its wage package in May or June 1997.

Briggs states that after his conversations with Murray and Frazier, he canceled his order with McGill in order to avoid potential difficulties on the job. Briggs says it cost them an additional $13,000 to go with another contractor. Briggs does not have any evidence that any of

his employees were approached by the union representatives about handling McGill product.

At the time of the dispute and to date, the economy has been booming and sheet metal workers have been in great demand. Accordingly, had the Employer's men refused to handle McGill product, the Employer would have had a difficult time obtaining replacement workers.

Action

Complaint should issue, absent settlement, alleging that the Union violated Section 8(b)(4)(ii)(B) of the Act by threatening and coercing PHB to cease doing business with McGill.

It is often difficult to ascertain whether statements made to a neutral general contractor concerning a union's dispute with another person rise to the level of an unlawful threat or coercion for the purpose of directing pressure at the neutrals in violation of Section 8(b)(4)(ii)(B) of the Act. Guidance is found in cases involving union statements unaccompanied by picketing and cases where common situs picketing is involved.

"The Board has held that it is not unlawful to give notice of prospective strike action against a subcontractor to a prime or general contractor [citation omitted]. Further, it would not appear to be unlawful for a union representative, upon being informed that the prime contractor intended to remove the offending employer from the jobsite, to inform the prime contractor that the union would cease its picketing activities …. However, where [] the removal of a picket line by the union is conditioned upon some action to be taken by the neutral general or prime contractor, such conduct constitutes a deliberate entanglement of a neutral person in a dispute not his own and is violative of the secondary boycott provision of the Act."[2]

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[2] Local No. 441, IBEW (Rollins Communications, Inc.), 222 NLRB 99 (1976), enfd. 97 LRRM 3228 (D.C. Cir. 1977), on remand from 510 F.2d 1274 (1975), denying enf. to 208 NLRB 943 (1974).

For example, in Rollins Communications, the union was conducting common situs picketing in accordance with Moore Dry Dock standards.[3] However, a union representative responded to an inquiry from the neutral general contractor with the statement that the pickets would be removed if the contractor agreed that the primary subcontractor would not work on the job until its employees were paid prevailing wages and benefits. The Board held that this statement demonstrated an unlawful object of picketing - to force a neutral to alter or modify its business relationship with the primary. Similarly, in Hylan Electric,[4] the Board found picketing unlawful where a union representative stated that pickets would be removed to give the neutral general contractor an opportunity to call another subcontractor from a list of acceptable companies provided by the union. However, in Southern Sun[5], the Board found no violation of 8(b)(4)(B) where, in response to the neutral general contractor who asked what it would take to have the union remove the pickets, a union representative replied that "it would take getting the Southern Sun electrical contractors off the job." Id. at 830. In finding no violation, the Board relied on the following additional facts: (1) the conversation in which the remark occurred was initiated by the neutral, not the union, and the remark was a response to a direct question by the neutral; (2) the remark was informational and was not intended, nor understood, as a request for the neutral general contractor to remove Southern Sun from the job; and (3) although the neutral took no action after the conversation, the union voluntarily terminated the picketing the same day.

Similarly, in Sheet Metal Workers Union, Local No. 2 (Hall Refrigeration Sales)[6], a nonpicketing case, the Board

[3] 222 NLRB at 99.

[4] Local 3, International Brotherhood of Electrical Workers (Hylan Electric Company, Inc., 204 NLRB 193, 195 (1973).

[5] Local 453, International Brotherhood of Electrical Workers (Southern Sun Electric Corp.), 237 NLRB 829 (1978), enf'd. 620 F.2d 170 (8th Cir. 1980).

[6] 203 NLRB 954 (1973).

held that a union violated Section 8(b)(4)(ii)(B) when it threatened a general contractor with removal of its members from a construction job if they were not awarded work being done by members of another union, in circumstances where the work in dispute was under the control of the subcontractor. Specifically, the union representative informed a neutral contractor that he was "afraid his workers would walk off the job on Monday if the other workers were not removed from the job. Thereafter, the general contractor asked the subcontractor to remove his men from the job until the matter was settled. Later, the union called the general contractor to find out what had been done about the matter and was told that the other employer had been pulled off the job. The union responded "fine" which [the Board reasoned] confirmed that the object of the threat was to force the neutral general contractor to cease doing business with the primary subcontractor.[7]

Applying the above line of cases to the facts here, we conclude that the Union's statements to PHB indicated a secondary object under Hall, Rollins Communications, Hylan Electric. In this regard, we note that Union business agent Murray asked PHB if it had placed an order with McGill, and when told that it had, Murray stated he wished PHB had not done so, and added that he did not know if the men would install McGill's product, or that the men might not install it, thereby indicating possible strike action if PHB did business with McGill. Murray then asked PHB if anything could be done, again strongly implying that PHB should take some affirmative action to not do business with McGill. In a second conversation with PHB, the Union repeated the statement that the men might not install McGill's product. As a result of these conversations, PHB canceled its order with McGill. Thus, the Union was directly responsible for PHB's decision to cease doing business with McGill, and as noted in Hall "the union can not exculpate itself by the putting the blame on its members". 203 NLRB at 956.

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[7] Cf. Carpenters District Council (Apollo Dry Wall), 211 NLRB 291 (1974) (union's vague reference to "trouble" or "problems" in a single conversation with a neutral employer too ambiguous to rise to the level of a threat or coercion under Section 8(b)(4)(ii)(B).

Accordingly, Complaint should issue, absent settlement, alleging that the Union violated Section 8(b)(4)(ii)(B) by threatening and coercing PHB to cease doing business with McGill.

B.J.K.